

Facts

You have submitted a request for advice on behalf of a town and a town supervisor. As stated in your correspondence, the town board plans to consider the adoption of a room tax under Wis. Stats. §66.0615. The supervisor operates a resort and provides transient housing which would be subject to collection of a room tax on patrons, reporting requirements, and forwarding of the taxes collected to the town. The supervisor has requested your opinion as to whether he can participate in discussion of and voting on the adoption of a room tax ordinance as a town supervisor. You have stated that any proposed ordinance would affect the entire class of lodging, motel, resort and tourism rooming house owners in the town in the same way, and that there are approximately 41 such facilities in the town.

Question

You ask whether the town supervisor may participate in discussion and votes related to a proposed room tax given that he operates establishments that would be subject to such a tax.

Discussion

Two provisions of the Ethics Code for State Local Officials are applicable to your question. Section 19.59(1)(a), *Wisconsin Statutes*, provides, in relevant part, that no local public official may use his or her public position or office to obtain financial gain or anything of substantial value for private benefit.¹ Also, Section 19.59(1) (c)1, *Wisconsin Statutes*, provides, in relevant part, that a local public official may take no official action substantially affecting a matter in which the official has a substantial financial interest.²

¹ Section 19.59(1)(a), *Wisconsin Statutes*, provides, in relevant part:

19.59 (1) Code of ethics for local government officials, employees and candidates. (1) (a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated.... This subsection does not prohibit a local public official from using the title or prestige of his or her office to obtain contributions that are permitted and reported as required by ch. 11.

² Section 19.59 (1) (c)1, *Wisconsin Statutes*, provides:

19.59(1)(c)1 Except as otherwise provided in par. (d), no local public official may:

The town supervisor is a local public official by virtue of the definitions in Sections 19.59(7x) and (7w)(a). Participating in debate and voting on legislation affecting residents and businesses of the township are “uses” of that public office, and are “official actions” that potentially could implicate sections 19.59(1)(a) and (1)(c)1. For the reasons described below, however, in the opinion of the Government Accountability Board, the supervisor may participate in debate and votes regarding a proposed room tax ordinance.

The key issue is whether the room tax, or its avoidance, would have a substantial financial impact on the supervisor. Your letter states that a room tax ordinance would impact all of the transient housing providers in the town. Presumably, one anticipated impact would be the obligation to collect the tax from customers and forward it to the town, as well as to submit documentation related to the taxes collected. These activities required to comply with government regulation would appear to have a de minimus financial impact at most. The room tax is imposed on the customer, not the business owner, who simply forwards the receipts to the taxing jurisdiction.

Another potential impact of a room tax ordinance on lodging establishments owned by the supervisor, at least in theory, is that visitors to the area may be discouraged from staying at properties subject to the local tax. It is the Board’s opinion that any correlation between a local room tax and the impact on revenues of the affected businesses in general, and to the supervisor’s properties in particular, is remote and speculative. The Board has previously concluded that when a financial interest is deemed remote, speculative, uncertain, or conjectural, the public policies underlying the ethics code favor the public official’s exercise of official duties – in this case, the supervisor’s participation in the legislative debate and decision regarding a proposed room tax.³ As noted in your correspondence, this is especially true when any impact of the legislative decision on the supervisor’s businesses would be identical to the impact on a relatively large group of business owners in the township.⁴

Finally, we note that the Board’s conclusion may be different if a proposed room tax ordinance carved out special exceptions or provisions which treated the supervisor’s properties more favorably than others subjected to regulation. The particular facts would then determine whether his actions involved a direct and substantial financial interest requiring recusal.

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

³ See, e.g., 2002 Wis Eth Bd 05; 1995 Wis Eth Bd 4; Also, see the expression of legislative intent contained in Sec. 19.45(1), Wis. Stats., which has relevance to local as well as state public officials.

⁴ See, e.g., 2009 GAB 2; 2003 Wis Eth Bd 9 and 9A; 1999 Wis Eth Bd 8.

For these reasons, the Government Accountability Board believes that the town supervisor may exercise his official duties as town supervisor to participate in debate and votes related to a proposed room tax ordinance that would apply to properties he owns as well as others in the township.

Advice

The Government Accountability Board advises:

- 1) A town supervisor may participate in discussions and votes related to a proposed room tax ordinance, notwithstanding his ownership of properties which would be subject to the ordinance, because any potential financial impact is remote and speculative.